

We believe this limitation is a reasonable one and in line with current practices of the Internal Revenue Service in determining the scope of nonmember business a co-op can conduct without losing its tax-exempt status. It should give bona fide co-ops ample flexibility to augment their primary motor transport service for members, yet should prevent them from engaging in any excessive amount of for-hire transport of nonfarm traffic to the detriment of regulated carriers.

Require co-ops hauling nonfarm traffic to notify the ICC of their intent to do so, and to open their books to ICC inspections.

This is a very important provision, since it would permit, for the first time, the ICC to get the true facts about the scope and nature of nonfarm traffic hauled by farmer co-ops. It should also discourage questionable operators from using the co-op exemption as to subterfuge to enter the general for-hire transport field, since they should find it difficult to prove their eligibility.

Classify U.S. traffic hauled by a co-op as nonmember traffic

This change would replace the present blanket exclusion of U.S. traffic from any member vs. nonmember limitations on a co-op's business. In other words, a co-op at present can haul traffic for the Government without any statutory limitation—and do it free of regulation even though in direct competition with regulated carriers. While court action is pending to prevent abuse of this type of exempt co-op transport, passage of this provision of S. 752 should help resolve this particular issue.

We believe the U.S. Government should be treated like any other shipper when it comes to purchasing transportation services. It should not be able to use the co-op exemption as a means of cutting rates of publicly regulated carriers. While passage of this provision may not stop the use of co-ops by Government agencies for hauling military traffic, it should prevent abuse of this privilege and possibly stop the present practice of the DOD in openly soliciting their services.

CONCLUSION

We have attempted to show the general concern throughout the transportation community about the loopholes in the present agricultural cooperative exemption that are encouraging ineligible cooperatives to use the exemption as a guise through which they can engage in general for-hire transportation. We have also pointed out that the ruling by an appellate court in the Northwest Case, allowed to remain in effect by the U.S. Supreme Court, has opened the door even wider by encouraging bona fide cooperatives to engage in general for-hire transport.

While the actual scope of such for-hire transport operations is unknown at this time, the trend is clearly upward. The longer the trend continues in this direction, the greater the harm to regulated public carriers. Therefore, remedial legislative action is needed as soon as possible.

Passage of S. 752 should help resolve this national transportation policy problem area before it becomes too serious. It should clarify Congressional intent concerning the use of the agricultural cooperative exemption and thus make it possible for the ICC to take more effective enforcement action against persons who misuse it. Carriers should benefit, since specific limitations would be placed on the scope and nature of traffic hauled by co-ops, thus preventing entry into the general for-hire transport field. Bona fide co-ops should benefit, since this legislation should help eliminate operators that use the co-op exemption as a subterfuge to avoid regulation, as well as eliminate the need for continued legal action because of differences over the use of the exemption as now worded.

For these reasons, TAA strongly favors passage of S. 752 in its present form and urges favorable action on it by your Subcommittee at the earliest possible date.

Mr. FRIEDEL. I want to thank you for your cooperation, Mr. Hammond.

Are there any questions, Mr. Pickle?

Mr. PICKLE. Mr. Hammond, when the Northwest case was decided, did you find that some of your members were doing business with these cooperatives?

Mr. HAMMOND. Yes, some of them were. Of course, after the decision, there were many more that were approached to do business with the co-ops. Several of those examples are set forth in my statement here